

**14 APRIL 1999**



**PROCEDURAL GUIDANCE FOR  
MEMORANDUM OF UNDERSTANDING  
INTERNATIONAL (MOUI)**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

---

**NOTICE:** This publication is available digitally on the AFDPO WWW site at:  
<http://www.e-publishing.af.mil>

---

OPR: 5 AF 605 ASUS/LGX (Mr. E. Payne)  
Supersedes 5 AF/LG Procedural Guidance,  
International Agreements,  
1 September 1994

Certified by: 5 AF 605 ASUS/CC (Col M. E. Cook)  
Pages: 7  
Distribution: F

---

This manual defines Fifth Air Force (5 AF) guidance and procedures for developing, and maintaining, MOUI's, and is mandatory guidance for all 5 AF staff agencies, units and wings. This manual complies with and is more restrictive than higher headquarters' direction set forth in AFI 51-701, *Negotiating, Concluding, Reporting, and Maintaining International Agreements*, and PACAF Supplement 1 to it.

**1. References.** See [Attachment 1](#).

**2. Purpose.** The purpose of a MOUI Agreement is to document support arrangements, including levels of support, responsibilities, reimbursements, and liabilities, between the United States (US) and a foreign country. The international agreement is a legal document binding both parties to the arrangements and is recognized by international law.

**3. Authority to Begin Negotiations:**

3.1. New Agreement. 5 AF staff agencies and wing Logistics Plans (LGX/XPL) offices must request approval in writing from 5 AF Commander (5 AF/CC), through 5 AF 605th Air Support Squadron CC (5 AF 605 ASUS/CC) to begin negotiations with a foreign government. The request should explain the need for the agreement, the parties, and anticipated costs. The base level staff judge advocate (SJA), (5 AF International Law Division [5 AF/JAI] for 5 AF initiated agreements) review and concur prior to the initiation of negotiations and determine:

3.1.1. The proposed agreement is an international agreement.

3.1.2. The authority to negotiate and conclude exists.

3.1.3. The proposed agreement is consistent with all US laws, instructions and policies.

3.1.4. The text of the agreement is legally sufficient to accomplish the desired objective.

3.1.5. Who has authority to enter into the agreement and obtain approval to proceed.

3.2. Existing Agreement. 5 AF staff agencies and wing LGX/XPL offices must request approval in writing from 5 AF/CC, through 5 AF 605 ASUS/CC to begin negotiations. Forward request (with draft copy of the proposed agreement with Legal and Fiscal Memorandum) to 5 AF 605 ASUS/LGX. The request must explain the reason for requesting authority to begin negotiations (e.g., mandatory review with no changes anticipated, out-of-cycle revision, etc.). Wing LGX/XPL office requests must be signed by the Wing/CC.

**4. Changes.** International agreements may be amended via an addendum to record significant changes between mandatory review points. An addendum must be approved and executed in the same manner, as was the basic agreement.

**5. Format.** International agreements are accomplished using a Memorandum of Agreement or Memorandum of Understanding format. The format provided in AFI 51-701/PACAF Supplement 1 should be used but the Support Agreement Manager (SAM) can make modifications to fit local needs, provided it has all the required elements in it.

**6. Attachments.** Attachments to international agreements will be referenced in the agreement and are considered part of the agreement. **The legal and fiscal memorandums are not considered official attachments and should not be referenced in the agreement.** Examples of attachments include lists of facilities or equipment involved, points of contact (POC) for functional areas, custodial arrangements, and language certifications. Try to avoid using attachments, which put procedures or operating instructions outside of the main agreement. Include this information in the main body of the agreement since this is probably “the main part of the agreement.” The reader should not have to flip back and forth to find the instructions. Attachments can be formatted in different ways provided they are numbered (e.g., **Attachment 1**) and have the agreement number in the upper right hand corner.

**7. Review, Revision, Termination Procedures.** Paragraph 2.2(6) in AFI 51-701/PACAF Supplement 1 outlines review, revision, and termination procedures for international agreements. Here are some general guidelines:

7.1. Reviews. Must be accomplished every three years or more frequently if so stated in the agreement (bilateral if possible). If bilateral review is not feasible (the SAM will ensure he/she has documentation showing they tried to conduct a review with the other party), conduct a unilateral review with US parties only. All parties involved in the agreement should be coordinated with including the base SJA and comptroller. If no changes are required, document that a review was conducted on the agreement coordination sheet and file in the agreement folder. If changes are required, initiate a revision using an addendum.

7.2. Revisions. Revisions to international agreements are documented on an addendum to the agreement. The addendum is coordinated and processed the same as the original agreement. This means the same process for getting the authority to negotiate and conclude the change is required. If there are many addenda to the agreement, consider reaccomplishing to incorporate all of the changes. Each addendum should be numbered and attached to the top of the agreement in sequence. Perform the standard distribution as was done on the original agreement to include a transmittal letter.

7.3. Terminations. International agreements shall be terminated via an addendum. Prior to termination, be sure to review the termination procedures in the agreement and pre-coordinate with the SJA, comptroller, and applicable Functional Area Agreement Coordinators (FAAC). Terminations can become very political; therefore cover all the bases before notifying the opposite party. Process the termination identical to the original agreement and notify the foreign representative only after authority to do so has been obtained. If the request for termination comes from the foreign receiver, make no commitments before processing the termination. Following agreement termination, appropriate SAM will maintain the folder indefinitely for historical purposes.

**8. Authority to Sign and Conclude.** The 5 AF/CC reviews each agreement or addendum and then delegate's approval to sign and conclude. A final typed draft of the agreement or addendum (formatted in accordance with (IAW) attachments listed in AFI 51-701/PACAF Supplement 1) with legal and fiscal memoranda will be sent to 5 AF 605 ASUS/LGX requesting delegation of authority from 5 AF/CC for wing CC (WG/CC) to sign and conclude. The agreement package going to the commander must be typed with letter quality printer and error free. Copies are unacceptable. The WG/CC is permitted to sign only what the 5 AF/CC has seen and granted permission for him/her to conclude. Any subsequent changes must be resubmitted to 5 AF/CC for approval. The cover letter must be signed by the 5AF division chief or WG/CC and summarize all significant changes. The agreement must be provided to 5 AF 605 ASUS/LGX at least 60 days before the expiration date, for 5 AF staff agencies to review and coordinate prior to going to 5 AF/CC for signature.

**9. Effective Date and Duration.** The date of the last signature (**which must be the US signature**) is the agreement's effective date in force. This date establishes the timeline for subsequent reviews. Do not use a different effective date. If the need for the agreement is ongoing, it may be made for an indefinite period, but this does not alleviate the review requirement.

**10. Process Flow and Time Line:** International agreements tend to require more time to complete than other types of agreements. There are several special steps which must be taken that are not necessary with domestic agreements, such as bilingual wording. Do not engage in "semi-negotiations" prior to obtaining delegation of authority from the appropriate authority. Follow the steps outlined below. The times indicated are recommendations. The times will not always reflect what actually occurs, especially when asking for a response from the foreign representative. Some international agreements have taken years to be consummated. Others have taken only days. Read the guidance and work closely with the SJA.

10.1. **Step 1: Agreement Initiation.** A request for support is communicated to the SAM either from the receiver country or from within the wing or 5 AF staff. Try to get the request in writing. Make sure the request is understood. Insisting that it be presented in writing will make that easier. Chances are that, if the request is generated from outside the wing, the involved FAAC have already been contacted and can help get the request on paper. Exploratory talks between the FAACs and foreign counterparts are usually necessary. Discuss the feasibility of providing the support with the functional office of primary responsibility (OPR), and discuss the legality with the SJA.

10.2. **Step 2: Preparation of the Draft Agreement (30 Days).** After the SAM receives the concept approval from the SJA and functional OPR to proceed, work with your FAACs to prepare a draft. This is one area where international agreements differ from other types of agreements. Normally, the receiver provides a draft agreement or at least good verbiage on what they want. This is usually not the case with international agreements. Once the FAAC understands what is wanted, they work with the

SAM to put it into the agreement format. **Do not** provide the draft to the foreign representative for their review until official authority has been granted to negotiate the agreement. The best way to accomplish the draft is to use the international agreement format provided in AFI 51-701/PACAF Supplement 1 to. Include all articles from the international agreement format and include as much information as is available. Then shotgun the partial draft out to the applicable functional areas asking for input, if any. For reference, remember to include whatever documents the foreign representative provided. Ask for a good functional POC also. Often one functional area will take the lead in getting the agreement developed, but remember to get all other FAAC's inputs as appropriate. If reimbursements are required, the comptroller must be involved early on, as should the manpower office. Remember to include them early in the process. During the process of developing the draft, the FAACs may need to clarify some areas of the support being requested. It is okay for them to clarify the request with the foreign representative, but it is extremely important that they do not make any commitments, verbal or otherwise, to the foreign representatives. Also, nothing should be provided in writing to the foreign counterpart. Remember, the FAAC is responsible for providing most of the verbiage for the agreement. The SAM can help facilitate this process but make sure SAM do not end up doing it for the FAAC.

**10.3. Step 3: Obtain Legal and Fiscal Memorandums (10 Days).** Every international agreement requires a legal and fiscal memorandum which addresses the legal and fiscal aspects of the agreement. The legal memorandum is prepared by the base SJA (5 AF/JA for 5 AF initiated agreements) and documents, in writing, who has the authority to enter into the agreement. The fiscal memorandum documents that funds are available to provide reimbursement (if required). The comptroller prepares this document. Both documents are included with the draft when it is forwarded to 5 AF/CC requesting authority to negotiate and conclude.

**10.4. Step 4: Obtain Authority to Negotiate the Agreement (30-60 Days).** Most international agreements that the SAM will be involved in will require authority delegation from the 5 AF/CC before WG/CC can negotiate and conclude the agreement. We will assume that this is the case for these instructions. Complete an AF Form 1768, **Staff Summary Sheet**, requesting authority to negotiate the international agreement, be delegated to the WG/CC (or other appropriate party) by the 5 AF/CC. Include the draft agreement, legal and fiscal memorandums, and wing top line coordination as attachments. For wings, the package cover letter will be signed by the WG/CC, and forwarded through the 5 AF 605 ASUS/CC for coordination. The 5 AF 605 ASUS/LGX will obtain appropriate 5 AF staff coordination and forward the package to the 5 AF/CC for approval. Upon approval, the package will be returned to the wing authorizing the agreement to be negotiated. If the agreement is subsequently changed, this process must be repeated as the 5 AF/CC only approves the agreement which he or she has seen.

**10.5. Step 5: Negotiations Commence (language translation if required) (60 Days).** Distribute the approved international agreement to the appropriate USAF FAACs and advise them that approval to begin negotiations has been granted. At this point, the lead FAAC and the SAM will decide how to negotiate the agreement. The SAM may be asked to forward the agreement to the foreign representative. If so, prepare the appropriate correspondence, usually a memo will do, from the WG/CC or other appropriate level, to transmit the agreement to the foreign POC (**without legal and fiscal memorandums**). Following that, sometimes the lead FAAC will organize a meeting between all parties to initiate negotiations, but normally 5 AF staff or wing FAACs (as appropriate) work out any differences individually. This part of the process can take an extremely long time, as the receiver must coordinate the proposed agreement with their activities. The SAM also may be asked to help facilitate negotia-

tions by arranging meetings between counterparts or staffing questions about the draft agreement verbiage. The SAM must be ready to assist in any way but do not get caught up in the negotiations. Make sure any changes to the draft are clear with the exact new wording, paragraph and page reference, and rationale for the change indicated. Constant contact with the SJA is imperative especially when substantive changes are requested "midstream" by either party (e.g., changes, which were not previously reviewed and approved by the SJA and approval authority). After negotiations, FAACs will forward required changes to the SAM for preparation of the final draft. The receiver may translate the agreement to facilitate coordination on their side. That is fine but the translation cannot be considered the "official" translation until it is certified by a foreign language translation certification official. The base SJA will assist wings with identification of this person during the next step.

**10.6. Step 6: Final Draft Preparation (bilingual certification if required) (20 Days).** The SAM compiles the final draft incorporating all changes provided by the FAACs. After completion of the final draft and all attachments, conclusion authority must be obtained from the appropriate approving official. Follow the same procedure in step 4 to get this. The SAM coordinate the new draft with all applicable wing FAACs before distribution, as they may need to adjust some of the changes made in other functional areas. During this coordination, keep in touch with the SJA and the Comptroller to have them verify that the previous legal and fiscal memorandums are okay. Also, if any other attachments are required, such as custodial arrangements, now is the time to get them. Then, the agreement is ready for the next step. Before we go on, be aware of the requirement and procedure for obtaining the foreign language certification. At some point the foreign representative may request that the agreement be prepared in their native language in addition to English. Normally the foreign side has a resource to accomplish this but if the foreign language version of the agreement is to be considered equally authentic, an authorized translator must certify that there are no substantial differences between the 2 versions. Contact the base SJA for assistance in identifying this resource and getting the certification accomplished. The agreement will need to address the status of the translation. If it is considered "equally authentic," the official certification must be provided. If not, place a statement at the end of the agreement like "this agreement has been prepared in English and Japanese, however, in the event of a conflict, the English version will govern."

**10.7. Step 7: Signature by Receiver (60 Days).** The agreement is ready for signature by the receiver when conclusion authority has been obtained, all wing FAACs have coordinated on the final draft version, the SJA and comptroller have provided their memorandums, all attachments have been prepared, and the WG/CC (or designated approval authority) is ready to consummate the agreement. Forward the proposed agreement, along with appropriate attachments (**do not include legal and fiscal memorandums**) to the receiver asking for their approval authority's signature. The receiver signs first and forwards the agreement back to the wing (or 5 AF as appropriate) for signature. At times, a signing ceremony may be requested which the SAM may be involved in arranging. Contact the protocol office for assistance with these arrangements. Once the receiver signs, the agreement is ready for the supplier signature and consummation.

**10.8. Step 8: Unit Signature and Consummation (30 Days).** For wings, forward the agreement with a cover letter or an AF Form 1768 to the WG/CC requesting signature on the agreement. Include a copy of the previous staff summary sheet, which contains all applicable wing activities coordination on the agreement, the legal and fiscal memorandums, and all attachments. When signed, make sure the date of signature is recorded and assign an agreement number. For 5 AF agreements, forward the original signed copy to 5 AF 605 ASUS/LGX for appropriate distribution and filing.

10.9. **Step 9: Forwarding the Transmittal Letter (5 Days).** A transmittal letter is required to be forwarded with the agreement within 20 days of agreement consummation (date of last signature). The format and specific requirements for this letter are found in AFI 51-701, Attachment 3, paragraph A3.2, and a sample can be found in AFI 51-701/PACAF Supplement 1, Attachment 1. The SAM forwards this letter if the wing has been delegated authority to sign the agreement, or by the 5 AF 605 ASUS/LGX if the 5 AF/CC has retained consummation authority or it is a 5 AF agreement. If late, the SAM will need to provide the reason for being late in the letter. Congress reads this so do everything you can to avoid being late.

10.10. **Step 10: Distribution of Agreement (5 Days).** Distribute copies of the agreement to all parties in the agreement, to include the following:

Department of State (Attn: Legal Advisor) Treaty Affairs Washington D.C. 20520 (2 certified copies)	DOD General Counsel International Affairs & Intelligence 1600 Defense Pentagon Washington D.C. 20301-1600 (2 certified copies)
SAF/GCI 1640 Air Force Pentagon Washington D.C. 20301-1000 (1 certified copy)	HQ USAF/JAI 1420 Air Force Pentagon Washington D.C. 20330-1420 (1 certified copy)
USCINCPAC/J06/J412 Camp H.M. Smith, HI 96861-5025 (1 certified copy)	HQ PACAF/LGXP 25 E ST SUITE H-310 Hickam AFB, HI 96853-5427 (1 copy)
5AF 605 ASUS/LGX Unit 5087 APO AP 96328-5087 (1 copy)	USFJ/J06 Unit 5068 APO AP 96328-5068 (1 copy)

**NOTE: Do not include the legal and fiscal memorandums in copy sent to the foreign representative.**

JOHN B. HALL, JR., Lieutenant General, USAF  
Commander

## Attachment 1

### REFERENCES

Learn and follow the guidance in the references and this guide, and the SAM should have no major problems with international agreements. Rely upon the base staff judge advocate (SJA), (5 AF/JAI) for help. The most important thing to remember when approached by another government representative, be it military or civilian, is to not give the impression of committing resources. The wing, or other organization (e.g., co-located operating base, etc.) must determine that it has the authority to do so before providing or receiving anything from a foreign government. The authority for most MOUIs has already been delegated to the 5 AF/CC.

AFI 32-2001, *Fire Protection Operations and Fire Prevention Program*.

AFPD 51-7, *International Law*.

AFI 51-701, *Negotiating, Concluding, Reporting, and Maintaining International Agreements*.

AFI 51-701/PACAFS1, *Negotiating, Concluding, Reporting, and Maintaining International Agreements*.

Treaty of Mutual Cooperation and Security, USA/GOJ, 19 Jan 60.

DoDD 5530.3, *International Agreements*.

USCINCPACINST 5711.6D, 26 Sept 96 *Negotiation and Conclusion of International Agreements*.

USFJ Policy Letter 11-16, *Authority and Responsibility for Negotiating, Concluding, Forwarding, and Dispositing International Agreements*.